**RESPONSIVENESS SUMMARY**
**(ADEQ response to source comments during public notice)**
**PHELPS DODGE MIAMI, INC.**
**DRAFT TITLE V PERMIT #1000046**

(Source comments in italics. Department response in regular font)

*The last sentence of the last paragraph of the Abstract should be revised to state that "State Only" requirements are not enforceable by the EPA Administrator.*

ADEQ's response: Change incorporated as suggested.

*Paragraph VIII of Attachment "A" General Provisions states that any document "required to be submitted by this permit" shall contain a certification by a responsible official. Phelps Dodge Miami recognizes that this provision is part of ADEQ's standard permit conditions and is virtually a verbatim restatement of A.A.C. R18-2-309.3. However, Phelps Dodge Miami requests clarification of the scope and interpretation of this requirement, in order to avoid misunderstandings or unreasonable expectations.*

*Phelps Dodge Miami first requests clarification that the requirement only applies to reporting requirements created by the permit, and not to reporting requirements that merely are incorporated from other regulations. For example, the semi-annual compliance certification, the general semi-annual reporting requirement, and the permit deviation reporting requirement are solely the creation of the Title V permit program; they are not merely incorporated from underlying regulations that are separate from the permitting rules. Therefore, these unique, Title V reporting requirements are "required to be submitted by this permit," rather than required to be submitted by independent rules that merely are incorporated into the permit. Phelps Dodge Miami recognizes that it must submit these reports with a certification by a responsible official.*

*In contrast, there are many reporting requirements that exist independently of the permitting program. For example, the Subpart O NESHAP requires Phelps Dodge Miami to submit a report with the average annual arsenic charging rate. 40 CFR 61.177(f). This requirement pre-dates the Title V permitting program and is independent of it. Therefore, this requirement is not "required to by submitted by this permit," but rather is independently required by the NESHAP. As a result, it should not need a certification, because the NESHAP does not require a certification. This result is consistent with Congress's and EPA's repeated statements that the Title V program is not intended to make existing regulations more stringent. Adding a certification requirement to the NESHAP report would make the NESHAP requirements more stringent.*

*Therefore, Phelps Dodge Miami requests ADEQ to clarify that the certification requirement for documents "required to be submitted by this permit" applies to the reporting requirements created for the first time pursuant to the permitting rules, and that it does not apply to reporting*

*requirements that are part of independent regulations, such as the Subpart O NESHAP, that the permit merely acknowledges as existing, applicable requirements.*

*Also, it is unreasonable to expect a certification for every piece of paper submitted pursuant to a regulation mentioned in the permit for purely practical reasons. The air quality rules call for a multitude of reports with varying time frames, some within 24 hours. It is not practical for all of these to be certified by a responsible official. For example, performance test reports often are sent directly to the agency by the testing firm. For practical reasons alone, ADEQ should interpret the certification requirement as not applying to reports of merely objective technical data, where a certification by a responsible official has no meaningful role.*

ADEQ's response: ADEQ is in agreement with PDMI's interpretation of A.A.C. R18-2-309.3. For the semi-annual compliance certifications and semi-annual monitoring reports, ADEQ would expect certifications by the primary responsible official. The Department concurs with PDMI that other technical reports required by the permit can be certified by other PDMI personnel who are authorized to serve as alternate responsible officials.

*Paragraph XII.D. of Attachment "A" also should include the affirmative defenses in A.A.C. R18-2-310 because these provisions are applicable law and have been approved by EPA as part of the Arizona State Implementation Plan (SIP). At minimum, the Responsiveness Summary should acknowledge that the absence of such a reference in the permit does not imply that R18-2-310 is not applicable.*

ADEQ's response: The affirmative defense provisions have been incorporated in the draft permit.

*Paragraph XVIII.F. of Attachment "A" requires submission of performance test results within 30 days. This time frame, which is not stated in the rules, may be acceptable for tests using EPA Method 5, but it is not acceptable for tests such as Arizona Method A1 or EPA Method 29 which require sending the catchments or washes to an outside lab for elemental analyses. Many times these results are received back from the lab 60 to 90 days after submittal. This is exactly why in Paragraph XVIII.H. of Attachment "B" a 3-month time is allowed for submission of data.*

ADEQ's response: The Department agrees that certain analytical procedures (like EPA Method 29) are rigorous and it may be impracticable for PDMI to report the test results in 30 days. For these special test methods, the Department encourages PDMI to make a written request to the Director to have the reporting time frame extended. This request can be made at the time that the performance test plan is submitted to the Department. Please be advised that the time frame of 30 days stipulated in the Arizona Testing Manual will continue to apply for conventional test procedures.

*Paragraph I.A. of Attachment "B" Specific Conditions requires a person certified in EPA Reference Method 9 to be on site or on call within 180 days of issuance. We do not believe that the referenced rule contains this language*.

ADEQ's response: The referenced rule (A.A.C. R18-2-306.A.3) authorizes the inclusion of periodic monitoring requirements in the permit to track compliance with applicable requirements. As PDMI is aware, the permit contains particulate matter and opacity standards for the different equipment in the facility. The requirement to have a certified Method-9 is necessary to ensure that trained personnel are available to perform the stipulated monitoring.

*In paragraph II.A.1 of Attachment "B" the clarifying phrase "to the furnaces (Isa and Electric) should be inserted after the phrase "new metal bearing material" to be consistent with the PSD permit.*

ADEQ's response: Change incorporated as suggested.

*Paragraph II.B.3 of Attachment "B" refers to the RCRA § 3010 Notice, which is a one-time notice, unless new hazardous wastes are managed. Phelps Dodge Miami has complied with this requirement, therefore, there is no reason for Phelps Dodge Miami to submit manifests to ADEQ pursuant to this permit condition unless Phelps Dodge Miami begins to manage a type of hazardous waste that is not covered by the previous § 3010 Notice. In that event, Paragraph II.B.2, already requires monthly reports to ADEQ that include the waste category of recyclables. Phelps Dodge Miami requests that II.B.3. be deleted as obsolete and/or duplicative*

ADEQ's response: The Department agrees with PDMI's comment. Condition II.B.3 of Attachment B has been deleted.

*Paragraph III.B.2 of Attachment "B" refers to water sprays associated with concentrate bins. Because concentrate normally contains about 10% moisture, there is no need to have water sprays associated with the concentrate bins. Thus, the reference to concentrate bins should be removed.*

ADEQ's response: Change incorporated as suggested.

*The performance test in Paragraph III.D. of Attachment "B" is an unnecessarily burdensome requirement. The 2-hour Method 9 performance test performed on these dust collectors after their initial installation all had average opacities less than 5%. There is no need to test a baghouse, especially one that only operates when the bin is being filled by a conveyor belt, when the opacity is less than 5%. This requirement should be removed.*

ADEQ's response: The draft permit contains PM emission limits for the coal, flux, revert, and concentrate bins. Performance tests are necessary to ensure that these emission limits are being met. The Department believes that the testing required by the draft permit (2 representative stacks tested once over the permit term) is reasonable. Permit language has been retained.

*Paragraph IV of Attachment "B" only pertains to acid plant stack emissions. However the wording does not clearly say that it applies only to the Acid Plant Tail Stack. For example A.1.c.*

*says "any visible emissions which exhibit greater than 20 percent opacity" but does not reference the stack. Sub-paragraph 2.a. requires establishing a baseline opacity for "each of the stacks". One of the stacks at the acid plant is the preheater stack which is covered in another section of the permit; this reference again should only apply to the tail stack. Sub-paragraph 3 requires semi-annual compliance testing; again, this only applies to the tail stack. Phelps Dodge Miami requests that ADEQ make appropriate revisions to this section, including a revision of the title of the section to read as follows: "Process Gases From the Isasmelt Furnace, Electric Furnace, and the Converters (Vented from the Acid Plant Tail Stack)."*

ADEQ's response: Changes incorporated as suggested.

*Paragraph V.A.1.b of Attachment "B" and several other sections of the permit refer to 40 CFR 52.126(b)(1) (a process weight rule in the old Gila-Pinal County SIP) as an applicable requirement and include the process weight table set forth in that regulation. However, 40 CFR 52.126(b)(1) has been repealed. On May 1, 2001 EPA published the repeal of the rule in the Federal Register. Therefore, § 52.126(b)(1) no longer exists and it is not an applicable requirement. Phelps Dodge Miami requests that the permit be revised to delete all references to §52.126(b)(1) and to delete all tables and other descriptions of the process weight limits taken from this rule. These provisions and tables should be replaced with the appropriate process weight rule in ADEQ's regulations, where applicable.*

ADEQ's response: The Department agrees with PDMI that 52.126(b)(1) is no longer an applicable requirement. All references to that rule have been deleted from the draft permit. Those conditions have been replaced by the appropriate rules from the Arizona Administrative Code.

*Phelps Dodge Miami requests that the title of Paragraph V of Attachment "B" be clarified as follows: "Captured Fugitive Emissions from the Isasmelt Furnace Launder and the Electric Furnace." The Vent Fume Stack serves the isasmelt furnace launder, but not the Isasmelt vessel. The recommended revisiion will avoid any mistaken impression that NSPS Subpart P applies to the Vent Fume Stack, which it does not. Subpart P applies to Isasmelt furnace vessel emissions but not to emissions generated outside of the furnace vessel in the Isasmelt furnace launder. The corresponding section of the Technical Review Document also should be clarified.*

ADEQ's response: Change incorporated as suggested.

*Phelps Dodge Miami requests that the requirements of Paragraph V.A.3 of Attachment "B" be deleted or deferred until after the control equipment required in sub-paragraph 5 is installed and operational. These provisions are designed to lead to immediate corrective action and/or a compliance schedule if the Vent Fume Stack opacity exceeds 20 % after the permit is issued. Therefore, the first time a recorded opacity level exceeds 20 %, this permit condition would set in motion a chain reaction that would require immediate corrective action (which is not possible) and another compliance schedule (which is not necessary). This would frustrate the parties' decision to defer action on Phelps Dodge Miami's variance petition and to implement the carefully*

*crafted compliance schedule separately set forth in the permit. Rather than create such confusion and possibly force the need for Phelps Dodge Miami to pursue its variance petition, Phelps Dodge Miami requests that Paragraph V.A.3 be deleted or deferred.*

*Because the intent is to have a method of showing compliance with the particulate standard between compliance tests, Phelps Dodge Miami proposes that the following requirement which is the same is is found in some of the New Source Performance Standards be substituted for Paragraph V.A.3.:*

*During performance testing and on a daily basis thereafter, measurements of the scrubber liquid flowrate shall be recorded. Reports of occurrences when measurements of the liquid flow rate differ by more than ±30 percent from the average determined during the most recent performance test shall be submitted with the semi-annual compliance certification.*

ADEQ's response: The Department agrees with PDMI's comment. The bi-weekly opacity monitoring requirement is being deleted and replaced by a requirement to monitor scrubber flow rate.

*Phelps Dodge Miami request that the frequency of the performance testing for particulates and lead required in Paragraphs IV and V of Attachment "B" be changed to annual testing rather than semi-annual testing to be consistent with most other Title V permits.*

ADEQ's response: The performance testing requirements for particulates and Lead have been carried over to the Title V permit from an earlier installation permit. PDMI (then "Cyprus") accepted limits for PM and Lead to net out of PSD review for the Isasmelt furnace installation project. The testing requirements with the semi-annual frequency are necessary to track compliance with those limits. This testing frequency has been consistently applied in Title V permits issued for other copper smelting operations. No change is being made to permit language.

*The correct name for the "Rod Plant Thermal Emissions Breaker" listed in Paragraph VIII.B. of Attachment "B" is Rod Plant Thermal Breaker.*

*The Acid Plant Preheater referenced in Paragraph VIII.B. of Attachment "B" is not a "boiler". It is a gas fired heater that heats process gasses or air. We suggest that the heading be changed to "Other Fuel Burning Equipment".*

*Paragraph VIII.C.1 (Rod Plant Shaft Furnace) of Attachment "B" should be clarified as follows: "Permittee shall only burn natural gas* ***as the fuel for*** *the rod plant shaft furnace."*

ADEQ's response: Changes incorporated as suggested.

*We question the need for the requirement in Paragraph IX.D. of Attachment "B" for performance tests for NOx on emergency generators limited to 500 hours per year or less of operation. In addition to the costs of performing such tests, it would require the permittee to use a portion of the*

*500 annual operating hours just to perform the tests.*

ADEQ's response: The performance test required by the draft permit is necessary for PDMI to demonstrate compliance with the 29 lb/hr nitrogen oxide emission limit for the Isasmelt emergency generator. Testing requirement is being retained.

*For simplicity we request that Sections X and XIII be combined as they both apply to continuous SO2 monitors.*

ADEQ's response: ADEQ agrees with PDMI that both Section X and XIII have sections that relate to continuous emission monitors (CEMS). Section X outlines the conditions from the "multi point rollback rule" in the state regulations. Among others, this section contains operational and calibration requirements for the CEMS. Section XII contain general provisions from the New Source Performance Standards in the federal regulations which relate to CEMS. Since the requirements from Section X and XIII relate to different applicable requirements, ADEQ would like to retain both the sections.

*Not only does the manufacturer not recommend daily zero adjustment and calibration procedures as specified in Paragraph X.C.3.e., of Attachment "B" it is not possible to do them in the case of an annubar. It has been customary in the past to not include this requirement and we request that it be deleted.*

ADEQ's response: Referenced condition has been deleted.

*The wording in Paragraph XI.C.1. a, and b. of Attachment "B" does not agree with the referenced NESHAP rule. The words "For all converters" should be replaced with "For each copper converter department" to be consistent with the rule and to make the calculation method agree with the rule.*

ADEQ's response: Change incorporated as suggested.

*The title of Paragraph XII of Attachment "B" should be clarified as follows: "Electrolytic Refinery, Anode Slimes Processing, and Rod Plant **(Excluding Shaft Furnace)**." The Rod Plant shaft furnace is separately addressed in Paragraph VIII.C of Attachment "B."*

ADEQ's response: Change incorporated as suggested.

*Does "abrasive blasting project" in Paragraph XV.A.2. of Attachment "B" mean each time abrasive blasting is conducted?*

ADEQ's response: Yes. The phrase "abrasive blasting project" means each time PDMI conducts abrasive blasting at its facility.

*Because A.A.C. R18-2-710 contains a definition of petroleum liquids, Paragraph XVII of Attachment "B" should be clarified.*

ADEQ's response: The definition of "Petroleum Liquids" from the Arizona Administrative Code has been incorporated.

*Paragraph XVIII.H.5. of Attachment "B" contains a requirement to report the average PM10 concentration for the quarter but does not contain a similar requirement pertaining to the average PM2.5 concentration.*

ADEQ's response: A requirement to report average $PM_{2.5}$ for each quarter has been included.

*Paragraph XVIII.J of Attachment "B" refers to "violations" of ambient standards. If ADEQ feels that reference to the national ambient air quality standards (NAAQS) somehow is relevant and should be provided for informational purposes only, then, at most, the reference should appear only in the Responsiveness Summary or in the Technical Evaluation documents, but not in the permit. In addition, if ADEQ makes such a statement outside of the permit, ADEQ should accompany it with an acknowledgement that the NAAQS apply to the State and are not applicable requirements under the permit.*

*The inclusion of these conditions in the permit implies, incorrectly, that a source is directly subject to the NAAQS as applicable requirements. As EPA and ADEQ have acknowledged, the NAAQS are not applicable requirements for Title V source permitting. For example, EPA's Title V guidance clearly states this conclusion: "Under the Act, NAAQS implementation is a requirement imposed on States in the SIP; it is not imposed directly on sources. In its final rule, EPA clarifies that the NAAQS . . . are applicable requirements for temporary sources only." 57 Fed. Reg. 32,276 (July 21, 1992) (the preamble to EPA's final Title V rule). Therefore, ADEQ lacks authority to impose this condition and its inclusion in this permit is prohibited by A.R.S. §41-1030.B. Accordingly, Phelps Dodge Miami requests that Paragraph XVIII.J be deleted from the permit (and, to be consistent, the Article 2 citations should be deleted from the permit shield).*

ADEQ's response: ADEQ agrees with PDMI's comment. The referenced conditions have been deleted from the draft permit.

*The fugitive SO2 limits in Attachment "C" should be identified for reference only and reference the requirement in Paragraph VI.B.1. of Attachment "B".*

ADEQ's response: A footnote has been added to Attachment C to clarify that the fugitive emissions will not be subject to a separate emission limit and that they will be regulated under the facility wide emission cap for sulfur dioxide.

*The installation date for the thermal breaker, alcohol and used oil tanks in Attachment E should be 1984.*

ADEQ's response: Changes incorporated as suggested.

*Phelps Dodge has not repeated certain other comments and requests that it previously made and which ADEQ declined and explained in ADEQ's Responsive Summary that accompanied the draft permit. Phelps Dodge Miami hereby incorporates those previous comments by reference.*

ADEQ's response: ADEQ's incorporates its prior responses (to PDMI's comments) by reference.

*There does not appear to be an attachment with a summary list of "applicable requirements" as is often found in Title V permits. Was this an oversight or is it not needed as they are identified in the body of the permit?*

ADEQ's response: The Department, in the past, has listed the applicable requirements in a separate attachment with a general permit shield in Attachment A. The Department has taken a different approach in drafting the more recent Title V permits. With this approach, the applicable requirement for each piece of equipment and the corresponding permit shield are listed in Attachment B of the permit. This approach helps in clarifying the objective of the permit shield; the shield is available to all permitted equipment for the underlying applicable requirements identified.